

Fair Political Practices Commission

Memorandum

To: Chairman Johnson, Commissioners Hodson, Huguenin, Leidigh & Remy

From: John W. Wallace, Assistant General Counsel
Scott Hallabrin, General Counsel

Subject: Adoption of Regulation 18531.62: Elected State Officeholder Bank Accounts; Amendment to Regulation 18544, Biennial Adjustments and Regulation 18545, Contribution Limit and Voluntary Expenditure Ceiling Amounts

Date: May 26, 2007

Proposed Commission Action: Permanent adoption of proposed amendments to Regulations 18544 and 18545, and permanent adoption of Regulation 18531.62.

Reason for Proposal: In 2006 Senate Bill 145 took effect as urgency legislation. SB 145 (Stats. 2006, Ch. 624, urgency) amended the “net debt” provision (Section 85316) of the Political Reform Act (the “Act”)¹ to allow for separate officeholder accounts. In January, the Commission adopted emergency Regulations 18531.62, 18531.63, 18531.64 and an emergency amendment to Regulation 18544 to implement SB 145. The emergency regulations expired 120 days after their adoption.

Summary of Proposed Regulations and Amendments:

Regulation 18531.62, created by merging the three emergency regulations, now provides all the basic rules for establishing, operating, and terminating an officeholder committee and account. The Commission requested further consideration of two issues.

- *Expenditure of Officeholder Funds:* At the January meeting, the Commission asked staff to explore what type of expenses *could not* be paid from the officeholder account. Staff reviewed two options, the first was reference to the list of “election-related expenses,” as set forth in Section 82015, and the second the list of “campaign” expenses in Regulation 18525. **Staff Recommendation:** *Staff recommends the use of the Regulation 18525(a) standard as reflected in the draft regulation.*
- *May officeholder funds be used to pay any administrative fines or civil judgments (18531.62(d))?* SB 145 provides that officeholder funds may be used for any purpose related to holding office. While the statute specifically states that these funds may

¹ Government Code Sections 81000 - 91014. Commission regulations appear at title 2, Sections 18109 - 18997, of the California Code of Regulations.

not be used for contributions to other committees, it has no similar prohibition on the use of these funds for fines or judgments. The only inquiry under the statute is whether the civil judgment or fine is *related to holding office* or is it actually an expenditure for campaign purposes. ***Staff Recommendation:*** *Staff proposes the Commission reject a prohibition on the use of officeholder funds for litigation.*

In addition to revisiting the issues noted above, staff has added language to deal with new issues identified since the emergency adoption of these regulations. Two notable additions:

- *Multiple Officeholder Committees (18531.62(e)(4).):* In some cases, officeholder accounts may overlap. For example an officeholder leaving the Assembly for the Senate may have an Assembly officeholder account open for 90 days after leaving the Assembly. However, the same officeholder may establish his new Senate officeholder account the day after the Senate election. To avoid multiple officeholder contributions to the same officeholder during the same calendar year, new language has been added to subdivision (e)(4) that would impose a single contribution limit (individual and in the aggregate) on the two accounts -- the higher of the two applicable limits.
- *Reopening Officeholder Committees (18531.62(g)(5).):* As part of the termination process applicable to candidate campaign committees, Regulation 18404.1 also permits the reopening of campaign committees after termination. Staff has included new language allowing the reopening of officeholder committees under limited circumstances.

Biennial Adjustments -- Amendments to Regulations 18544 and 18545.

Regulation 18544 has been amended to include periodic adjustments to the officeholder limits. Regulation 18545 has been amended to reflect the current officeholder contribution limits that are identical to those set out in the new statutory language.

Recommendation: Adopt all of the proposed regulations and amendments, with the recommendations set forth above. Monitor the effectiveness of the regulations and return to the Commission with an update in September, if necessary.

Additional Information: Public Comment.

On March 6, 2007, Shirley Grindle submitted the following comments and questions pertaining to the emergency regulations and accompanying memorandum presented in January.

1. What is the contribution limit per year for contributions made to an officeholder account?

Since the emergency regulations were adopted (and in response to a comment from Commissioner Leidigh), Regulation 18545 is being amended in the permanent adoption packet and sets out the contribution limits.

2. Is a contribution to an officeholder account aggregated with campaign contributions made by the same contributor to 1) the prior election cycle in which the officeholder was elected to office, or 2) the next election cycle to run for the same office, or 3) to a future election cycle for a different elective state office (and what happens if an officeholder is not running for a different elective state office -- what are his officeholder contributions aggregated with in that case)?

The revised regulation uses the date of receipt of the contribution as the trigger for cumulation. If a contribution is received *during* the term of office for which the officeholder account was created and the elected state officer maintains a committee for election to state office at any time during the term, cumulation applies.

3. Why is attribution not required? Is there a conflict between Reg. 18531.63 and Reg. 18531.64 with regard to cumulating officeholder contributions and campaign contributions?

The new version does not allow transfers so attribution is not necessary. With respect to the limited redesignation provision in (g)(2), subdivision (e)(4) would prohibit an additional contribution from a contributor who has made a maximum officeholder contribution in the same calendar year.

Appendix 1. Regs. 18531.62, Regs. 18544, 18545

Appendix 2: SB 145

Appendix 3: Grindle Comment Letter